

ORIGINAL

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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JUL 18 2008  
at 2 o'clock and 30 min  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

**CV 08 00330 SOM LEK**

UULA SAKARIA,	)	CIVIL NO. _____
	)	
	)	
Plaintiff,	)	
	)	COMPLAINT; EXHIBITS "A" AND
	)	"B"; SUMMONS
vs.	)	
	)	
FMS INVESTMENT	)	
CORPORATION,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT

COMES NOW Plaintiff, by and through his undersigned attorney, and alleges and avers as follows:

INTRODUCTION

1. This Complaint is filed and these proceedings are instituted under the "Fair Debt Collection Practices Act", 15 U.S.C. § 1692 et seq., H.R.S. § 480-2, and H.R.S.

Chapter 443B, to recover actual and statutory damages, reasonable attorney's fees, and costs of suit by reason of the Defendant's violations of the foregoing statutes, all of which occurred within one year from the filing date of this Complaint.

#### JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331. The supplemental jurisdiction of this Court is invoked over Count II of the Complaint pursuant to 28 U.S.C. § 1367, which Count arises under Chapters 443B and 480 of the Hawaii Revised Statutes, inasmuch as such state law claims arise from a common nucleus of operative facts.

#### PARTIES

3. Plaintiff is a natural adult person, is a consumer as defined in 15 U.S.C. § 1692a(3) and H.R.S. § 480-1, is a debtor as defined in H.R.S. § 443B-1, and was a resident of the State of Hawaii at all relevant times herein.

4. On information and belief, Defendant is a Maryland corporation doing business in the State of Hawaii as a collection agency, as defined in H.R.S. § 443B-1, and as a debt collector, as defined in 15 U.S.C. § 1692a(6).

Defendant attempted to collect a debt, as defined in 15 U.S.C. § 1692a(5) and H.R.S. § 443B-1, in Hawaii from Plaintiff.

FACTS

5. Within the year prior to the filing of this action, Defendant has been attempting on behalf of a third party to collect an alleged debt from Plaintiff.

6. On or about July 19, 2007, Defendant sent a letter to Plaintiff demanding payment of \$2,201.07, of which amount \$833.37 was alleged to represent an "Original Charge Off Balance" and \$1,367.70 was alleged to represent "Accrued Interest". The letter further alleged that said debt was owed to a third party regarding account number 0784728432187. A true and correct copy of the July 19, 2007 letter is attached hereto as Exhibit "A".

7. Exhibit "A" was the first letter Defendant sent to Plaintiff.

8. On or about November 23, 2007, Defendant sent a letter to Plaintiff demanding payment of \$2,235.91, of which amount \$2,235.91 was alleged to represent an "Original Charge Off Balance" and \$0.00 was alleged to represent "Accrued Interest". The letter further alleged that said debt was owed to a third party regarding account

number 0784728432187. A true and correct copy of the November 23, 2007 letter is attached hereto as Exhibit "B".

9. The underlying debt was incurred primarily for personal, family, or household purposes.

10. Plaintiff was confused, angry, and suffered emotional distress and mental anguish as a result of the Defendant's collection efforts.

#### COUNT I

11. Plaintiff realleges and incorporates paragraphs 1 through 10 of this Complaint.

12. Defendant has violated the Fair Debt Collection Practices Act in the following ways:

(a) Defendant has used false, deceptive, and misleading misrepresentations in connection with the collection of the above claim.

(b) Defendant has used unfair or unconscionable means to collect and to attempt to collect the above claim.

#### COUNT II

13. Plaintiff realleges and incorporates paragraphs 1 through 12 of this Complaint.

14. Defendant has violated Chapters 443B and 480 of the Hawaii Revised Statutes as alleged above.

15. Defendant's violations of the Fair Debt Collection Practices Act and/or H.R.S. Chapter 443B constitute unfair and deceptive acts or practices in violation of H.R.S. Chapter 480.

16. Defendant's actions and disclosures in connection with the above-described debt were immoral, unethical, oppressive, unscrupulous, and substantially injurious to Plaintiff as a consumer, and were unfair and deceptive, in violation of H.R.S. Chapter 480.

17. Plaintiff has suffered injury to his property in an amount to be proved at trial, by reason of Defendant's violations.

WHEREFORE, Plaintiff prays that the Court:

AS TO COUNT I:

1. Award Plaintiff his actual damages as will be proved at trial.

2. Award Plaintiff statutory damages in the amount of \$1,000.00.

AS TO COUNT II:

3. Award Plaintiff damages in the amount of three times the injury to his property, but not less than \$5,000.00.


4. Declare that the underlying obligations are void and that Plaintiff owes Defendant nothing.

AS TO ALL COUNTS:

5. Award Plaintiff reasonable attorney's fees and costs of Court.

6. Award Plaintiff such other and further relief and the Court deems appropriate.

DATED: Honolulu, Hawaii, July 18, 2008.

A handwritten signature in black ink, appearing to read "Van-Alan H. Shima", written over a horizontal line.

VAN-ALAN H. SHIMA  
Attorney for Plaintiff